IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 372 OF 2002.

1. Shri Salvador Fernandes,
   and wife,
2. Smt. Menina Fernandes,
   both r/o Plot No. 48,
   Snehal Building,
   Flat No. 9, Tarun Bharat
   Marg Society, Chakala-
   Andheri (East), Mumbai. ... Petitioners.

Versus

Smt. Conceicao Fernandes,
r/o Valankani Chawl,
Chakala-Sahara Road,
Andheri (East), Mumbai.
presently r/at c/o Pedro
Rodrigues, H. No. 46,
Segun Dando, Navelim. Goa. ... Respondent.

Mr. S.S. Kakodkar, Advocate for the Petitioners.

Mr. C.A. Coutinho, Advocate for the Respondents.

Coram: P.V. HARDAS, J.

Date: 14th February 2003.

ORAL JUDGMENT.

Rule. Rule made returnable forthwith. By consent of parties, this petition is taken up for final hearing.

2. The petitioners, being aggrieved by the Judgment of the Additional District Judge, South Goa, Margao, dated 3rd October 2002, in Miscellaneous Civil Appeal No. 139 of 2001, dismissing the appeal and maintaining the Order, dated 30th November 2001, passed by the Civil Judge, Junior Division, Margao, in Civil Miscellaneous Application No. 310/2001/D in Regular

Civil Suit No. 166/2001/D, dismissing the application for temporary injunction filed by the present petitioners/plaintiffs, have filed the present petition.

3. The two Courts below on consideration of the documents and the pleadings of the parties have arrived at a finding that the plaintiffs have not made out a prima facie case for grant of injunction. Both the Orders are being assailed on the ground that the two Courts below have not appreciated the documents and pleadings and have committed an error in the exercise of jurisdiction. Such a plea is not available under Article 227 of the Constitution of India particularly when the two Courts below, on consideration of the documents and pleadings, have arrived at a finding that the plaintiffs have not made out a prima facie case for grant of injunction. Photographs have been filed in the present petition by the respondent/defendant showing that virtually the construction has been completed. In view of this, according to me, there is hardly any scope for interference. A fervent plea is made by the learned counsel for the petitioners that the learned trial Court be directed to expeditiously decide the suit. The suit is of the year 2001. The learned trial Court shall accord the same priority as accorded to suits of the year 2001.

4. In view of the above, the Writ Petition is dismissed with no order as to costs. Rule is discharged.

(P.V. HARDAS)
JUDGE.

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